UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

WASTE MANAGEMENT OF
MARYLAND, INC.[1]

Employer

and Case 5-RD-1309

WILLIAM E. JUPITER

Petitioner

and

DRIVERS, CHAUFFEURS AND HELPERS,
LOCAL 639, A/W INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO[1]

Intervenor

DECISION AND ORDER

The Employer is engaged in the business of solid waste hauling and transfer from its White Plains, Maryland facility. On September 19, 2002, the Petitioner filed this petition pursuant to Section 9(c) of the National Labor Relations Act, seeking an election to decertify the collective-bargaining representative. A hearing was held on October 7, 2002. The Employer and Intervenor (the Union) filed post-hearing briefs on October 21, 2002.

The sole issue to be decided is whether there is a contract that blocks this petition. The Employer and the Petitioner contend that there is no contract that bars an election as there is no written agreement signed by both parties; there was no ratification by the

[1] The parties' names appear as amended at the hearing.

employees of the agreement; and the effective date of an agreement would be after the date the petition was filed. The Union argues that a contract exists as the parties' signatures do not have to be on the same document and that internal union procedures are not relevant in this case. I conclude, as discussed below, that the agreement between the Union and the Employer meets the formal requirements sufficient to establish it as a bar to the instant petition.

Pursuant to an election on September 7, 2001, the Union was certified as the collective-bargaining representative on September 18, 2001, of the employees in the following bargaining unit:

> All full-time and regular part-time drivers, helpers, and mechanics employed by the Employer at its White Plains, Maryland facility, but excluding all managerial employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

The Employer and the Union engaged in numerous negotiating sessions between January 2002 and July 2002. By letter dated July 15, 2002, the Employer's chief negotiator Theofilos Galoozis sent the Union a proposed collective-bargaining agreement that had been tentatively agreed to by the Union and the Employer.[2] The letter stated:

> Enclosed is a draft of our final agreement. I understand a ratification meeting is scheduled for this week. Please contact me with the results as soon as possible. Upon notification of ratification, we will immediately implement its terms the next pay period.[3]

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[2] The proposed agreement was a complete document. The only provision left blank was the date of execution of the agreement. Galoozis authorized his assistant to sign his name to the cover letter.

[3] Woodward testified that ratification was not a condition precedent to an agreement. Galoozis testified that it was his understanding that ratification was the method in which a contract is accepted and that he "never heard any opposition" to making ratification a condition precedent. The July 15th proposed collective-bargaining agreement does not contain any provision requiring ratification or mentioning ratification in any manner.

Thereafter the Employer was told that the employees had rejected the collective-bargaining agreement at a ratification vote on July 18, 2002.

Between mid-July and mid-September 2002, the Employer and the Union engaged in further negotiations, in person and by telephone. During these negotiations the Union proposed changing the duration of the agreement from four years to five years. The Employer did not oppose this change. However, no discussions were held as to wages and benefits for the fifth year of the collective-bargaining agreement. Galoozis testified that the Employer never changed its July 15th contract offer to include a five year duration. Article XXX – DURATION in the proposed collective-bargaining agreement provides:

> This Agreement shall be in full force and effect from (DATE OF EXECUTION) through (FOUR YEARS FROM DATE OF EXECUTION), and shall continue thereafter from year to year unless notice is given in writing of a desire to change, modify or terminate the Agreement by either party to the other party sixty (60) days or more prior to the expiration of such period. In the event notice is so given to change or modify, the parties shall commence negotiations within such sixty (60) day period, and this Agreement shall continue in effect until written notice is given by either party to terminate this Agreement.

Union representative James Woodward testified that on September 13, 2002, he and the Union's chief negotiator Mike Mattia discussed the outstanding collective-bargaining proposal with Galoozis, who told them it was his "final offer." Woodward talked to the Union's International Executive Board for authorization to sign the "final offer" and polled Local 639's Executive Board to obtain authority to accept the agreement. On September 16, 2002, the Union held another ratification vote on the July 15th proposed collective-bargaining agreement, which included the four year duration period as set forth in Article XXX. A majority of the employees who attended the

ratification meeting voted to reject the agreement. The employees at the meeting told the Union they would not strike.

On September 18, 2002, Galoozis received a call from Woodward asking if the Employer's proposal had been retracted. Galoozis responded that the proposal had not been withdrawn, but it was not his "final offer." Woodward told him that they were going to accept the contract proposal. Galoozis expressed concern about whether the Union had authority to sign the agreement. Woodward assured him that he had checked with his International Union and that the Union had the authority to do so. On September 18, 2002, at 3:04 p.m., the Employer received a letter by facsimile transmission from the Union stating, in pertinent part:

> The Executive Board of Teamsters, Local #639 has determined to accept the final offer submitted by Waste Management of White Plains, MD, on Friday, September 13, 2002.
>
> Pursuant to Article XII, Section 1(b)(2), the Executive Board is required to execute a contract when the eligible members have rejected a final offer but have refused to strike. We agree that the contract should be effective this 18th day of September and you should prepare the appropriate agreement for signature.

Galoozis testified that he did not respond to this letter; that he has not signed any contract proposal; and that this proposal was not a "final offer." He stated that the Union did not accept the July 15th tentative agreement according to its terms because it was not ratified and because September 18 is mid-pay period and the Employer had made it clear that any agreement would begin the pay period after acceptance.[4] Furthermore, according to Galoozis, the agreement was never executed. He testified that the

[4] There is no record evidence regarding when the pay period starts.

agreement would not have been executed by him, but rather by a management representative.

I have carefully considered the evidence and the arguments presented by the parties on the above issue. For the reasons set forth below, I conclude there is a contract bar to the petition.

ANALYSIS

When a petition is filed for a representation election among a group of employees who are covered by a collective-bargaining agreement, the Board must decide whether the asserted contract exists in fact and whether it conforms to certain requirements. If the Board finds that the contract does exist and that the requirements are met, the contract is held a bar to an election. *Hexton Furniture Co.*, 111 NLRB 342 (1955). The required elements are set forth in *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). In order to meet the threshold inquiry of the contract bar doctrine, the agreement must be written, signed before a petition is filed, contain substantial terms and conditions of employment, encompass the employees involved in the petition, and cover an appropriate unit. Id.; *Seton Medical Center*, 317 NLRB 87 (1995). The burden of proving that a contract is a bar is on the party asserting the doctrine. *Roosevelt Memorial Park*, 187 NLRB 517 (1970).

The Employer asserts that it never signed the proposed collective-bargaining agreement. In order to bar the petition, the contract must be signed by all the parties before the petition is filed. *DePaul Adult Care Communities*, 325 NLRB 681 (1998); *Freuhauf Trailer Co.*, 87 NLRB 589 (1949). The signatures do not, however, have to be on the same formal document. *Holiday Inn*, 225 NLRB 1092 (1976); *Liberty House*, 225

NLRB 869 (1976). Informal documents, such as a written proposal which contain substantial terms and conditions of employment and a written acceptance of that proposal, are sufficient if signed by both parties. *Seton Medical Center*, 317 NLRB 87 (1995). I find that the Employer's chief negotiator's submission of the contract proposal on July 15, 2002, with the cover letter bearing the signature of the chief negotiator, and the Union's letter of September 18, 2002, sent by facsimile transmission on that date signed by Woodward on behalf of the Union, and stating that it had accepted the proposed contract, satisfies the requirement that the contract be signed before the petition is filed. As the Board stated in *Holiday Inn*, 225 NLRB 1092 (1976), a contract need not be encompassed within a single formal document but may consist of an exchange of the written proposal and a written acceptance.

The Employer further asserts that its chief negotiator would not have signed the agreement under any circumstances, rather it would have been signed by a management representative. In *Aptos Seascape Corp.*, 194 NLRB 540, 544 (1971), the Board stated that "an agent appointed to negotiate a collective-bargaining contract is deemed to have apparent authority to bind his principal in the absence of notice to the contrary." The record evidence clearly establishes that Galoozis was the chief negotiator for the Employer. There is no evidence or claim that Galoozis' authority was in any way limited or that he did not have the authority to bind his principal. Accordingly, Galoozis' signature on the letter transmitting the contract proposal is sufficient to establish that the contract was signed by an authorized agent of the Employer.

As to the Employer's assertion that ratification of the contract was a condition precedent, the Board law is clear that an unratified written contract bars an election

unless ratification is expressly required by its terms. *International Paper Co.*, 294 NLRB 1168 fn. 1 (1989). It is undisputed that ratification is not mentioned in the proposed collective-bargaining agreement. The fact that the Employer assumes that the contract needs to be ratified is insufficient to establish that ratification is a condition precedent before the contract can operate as a bar. Even if ratification is required by the union's constitution or bylaws, evidence of prior ratification is not material unless it is made an express condition precedent in the contract itself. *Appalachian Shale Products Co.*, 121 NLRB at 1162-1163. See also *Aramark Sports & Entertainment Services*, 327 NLRB 47 fn. 4 (1998); *Gale City Optical Co.*, 175 NLRB 1059, 1061 (1969).

The Employer argues that the contract does not bar the petition because it was not effective before the petition was filed. The Employer contends that since its July 15th cover letter said the contract would be effective the next pay period after ratification, the contract could not be effective, as the Union contends, on September 18, the middle of a pay period. The Employer argues that since the petition was filed with the Board before the contract could be effective, an election should be held. *Deluxe Metal Furniture Co.*, 121 NLRB 995, 999 fn. 6 (1958). Since I have found that there is a signed agreement as of September 18, I find that the language of Article XXX of the collective-bargaining agreement controls. The agreement explicitly states that it is in effect from the date of execution through four years from date of execution. Nowhere in the agreement does it state that it is effective the next pay period. Accordingly, I find that the contract was effective immediately upon its execution, and thus before the petition was filed.

The Employer argues that even if I find a contract bar, that the contract does not impart sufficient stability to the parties' bargaining relationship to bar the instant petition,

citing *Frank Hager, Inc.*, 230 NLRB 476 (1977). In *Frank Hager*, the Board found that a contract did not bar a representation election in circumstances where the agreement was not the result of bona fide negotiations. In this case, it is clear that the collective-bargaining agreement was a product reached through the collective-bargaining process with numerous negotiating sessions between the Union, who is the certified collective-bargaining representative, and the Employer. Accordingly, the collective-bargaining agreement constitutes a bar to the instant petition.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.[5]

3. The Union claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6*)* and (7) of the Act.

ORDER

The petition is dismissed.

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[5] During the past twelve months, the Employer, a Maryland corporation, provided services, through its White Plains, Maryland facility, valued in excess of $50,000 to customers located outside the State of Maryland.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **November 4, 2002.** The request may **not** be filed by facsimile.

(SEAL)
Dated: OCTOBER 21, 2002

WAYNE R. GOLD

Wayne R. Gold, Regional Director,
National Labor Relations Board
Region 5

Classification Index
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